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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the Foundation for Aboriginal and Islander Research Action Aboriginal Corporation, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[10 August 2018]

* Issued as received, in the language(s) of submission only.

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Annual Report of the High Commissioner for Human Rights on the Rights of Indigenous Peoples

The Foundation for Aboriginal and Islander Research Action (FAIRA) welcomes the 2018 report of the High Commissioner for Human Rights on the rights of indigenous peoples (A/HRC/39/37).

FAIRA notes with deep concern the report concludes that the human rights mechanisms continue to find that indigenous peoples of the world continue to face numerous significant human rights challenges including

- intimidation and reprisals against indigenous peoples' human rights defenders;
- lack of recognition and protection of indigenous peoples' land rights;
- insufficient effort to collect disaggregated data on indigenous peoples for the 2030 Agenda for Sustainable Development; and
- failure to ensure full and effective enjoyment of rights for indigenous peoples through domestic laws and policies and strategies.

The Human Rights Council must be deeply concerned that States still neglect their duty to provide fundamental affirmation of indigenous peoples' self-determination and the capacity to promote and protect their rights.

OHCHR ACTIVITIES

FAIRA notes the efforts by OHCHR at the country, regional and headquarter levels to engage with and involve indigenous peoples in all the international initiatives that affect them.

OHCHR offices have participated in engagement at the country level where development activities continue to be undertaken in indigenous peoples' lands and territories without sufficient regard for the principle of free, prior and informed consent. The report addresses OHCHR engagement in Central and South America, in Costa Rica, Colombia, Guatemala, Honduras, Mexico and Peru. OHCHR also has engaged with Cambodia and The Philippines in Asia, and Kenya and the Democratic Republic of the Congo in Africa.

1. **FAIRA requests that OHCHR in future provide wider information on OHCHR engagement involving indigenous peoples at regional and country levels in all regions of the world, especially with more direct attention with and engagement of Western European and Others Group members, such as Australia, Canada, New Zealand, United States of America and the Nordic countries.**

These particular nations tend to discourage external or independent engagement with indigenous peoples by utilising their political and economic affluence to maintain historical and exploitative laws and policies to the disadvantage of the indigenous peoples. While the UN offices in Suva, Fiji, have a role to promote and protect the rights of women throughout this region the office does not have engagement with the indigenous peoples nor any strategy to implement the UN Declaration on the Rights of Indigenous Peoples, the outcome document of the World Conference on Indigenous Peoples nor indigenous peoples' involvement in the Strategic Development Goals.

2. **FAIRA recommends that OHCHR immediately review its operations in the Pacific region by establishing an OHCHR office in Australia primarily to engage with indigenous peoples of the Pacific region to promote and protect the rights of the indigenous peoples of the Pacific region.**

HUMAN RIGHTS TREATIES AND INDIGENOUS PEOPLES

The report takes note that human rights treaty bodies continue to conclude in their periodic examination of country reports that the rights of indigenous peoples are overlooked and suppressed at the country levels, despite the international attention given to their status and rights.

Certain concluding observations regarding indigenous peoples from the treaty bodies have been grouped in this report under thematic headings such as Free, Prior and Informed Consent, Land Rights, Human Rights Defenders, Early Warning Mechanisms, Access to Justice, Agenda 2030, Social and Cultural Rights, and Violence Against Indigenous Women. This format has benefit in identifying major areas of concern, but at the same time the format confiscates whether progress is being made at country levels, where States are expected to take specific actions to promote and protect the rights of indigenous peoples.

Such actions should include to i) integrate the rights of indigenous peoples into laws, policies and programs of the state, ii) develop national action plans in coordination with the indigenous peoples, and iii) provide capacity to the indigenous peoples to prepare infrastructure for their development.

FAIRA notes that almost all human rights treaty bodies remain concerned about the situation of the indigenous peoples and continue to recommend adherence to the rights of Indigenous Peoples and non-discrimination. There is little evidence that the Declaration on the Rights of Indigenous Peoples is being implemented at the country level and it appears that states are not concerned about breaches of their obligations to respect the rights of indigenous peoples nor the risk of peer-level sanctions at the international level over their treatment of indigenous peoples.

PARTICIPATION OF INDIGENOUS PEOPLES IN UN PROCESSES

FAIRA notes the mechanism established at the United Nations for direct participation by indigenous peoples in international processes. The General Assembly resolution 71/321 encourages further efforts to enhance the participation on indigenous peoples. Such participation has been considered by the Human Rights Council in the review of the Expert Mechanism on the Rights of Indigenous Peoples, the Special Rapporteur on the Rights of Indigenous Peoples and the United Nations Voluntary Fund for Indigenous Peoples.

However further achievement can be made if the Universal Periodic Review process was to be revised to improve access by indigenous peoples to contribute to and participate in the UPR examinations. This can be achieved by improving capacity for indigenous peoples to make submissions to the reviews and to be heard at the stage of reports to the Human Rights Council. At present the opportunity for statements by civil society during the UPR reports is very limited and it is unlikely that Indigenous peoples' representatives will get opportunity to speak when reports are being discussed. The opportunity for oral presentations at UPR from civil society is highly competitive and dominated by large NGOs that are well-resourced, based in Geneva and specialist in UPR procedure. Indigenous peoples are not heard though they remain the most invisible and oppressed groups in country situations.

3. **FAIRA recommends that during the UPR process where applicable one place in the list of speakers be allocated to a representative organisation from the indigenous peoples in that country.**

4. **FAIRA further recommends that indigenous persons should be considered for appointments to human rights treaty bodies and special mechanisms established by the Human Rights Council.**

INTERNATIONAL ACTION FOR RIGHTS OF INDIGENOUS PEOPLES

5. **FAIRA welcomes the appointment of Australia to the Human Rights Council and calls upon Australia to take pronounced steps at the global level towards implementation of the rights of indigenous peoples.**

Australia has already pledged, as its part in joining the Human Rights Council, to promote and protect the rights of indigenous peoples, and this pledge should now be followed up by real actions that resonate with indigenous peoples and states alike.

FAIRA asks Australia to take the lead on the Human Rights Council to have indigenous peoples and their inherent rights formally acknowledged by states, through specific legislation, charters and/or programs.

In some instances, like in contemporary Australia, this step is a difficult one to attempt when the major population groups remain ignorant of the injustices, unaware of the entrenched discrimination and have ingrained intolerances. But as Australia knows, non-discrimination, equality and justice are not always achieved through consensus or majority rule but by commitment to principles and adherence to the rule of law. Adherence to the rule of law requires strength in the face of opposition from vested interests, entrenched beliefs and blind ignorance.

Since the adoption of the UN Declaration on the Rights of Indigenous Peoples states have been too hesitant to change domestic laws and policies, thus leaving the indigenous populations trapped with the disadvantages of social rejection, denial of identity, poverty and forced assimilation. The Declaration is clear, in the preamble, in describing the historical and contemporary subjugation of the indigenous peoples around the world. In these same paragraphs the Declaration clearly affirms that the rights of indigenous peoples are a matter of international concern and that the international community has a leading role to play in implementing the rights of indigenous peoples.

Australia should now ask the Human Rights Council to play a more hands-on role. Australia has in previous years shown itself to be a leader on indigenous rights but slipped into the shadows after 1) fighting racism and inequality, through the Racial Discrimination Act, and 2) setting precedence for Land Rights, with the Northern Territory Land Rights Act and Aboriginal Heritage Act, and 3) respecting self-determination under the auspices of the Aboriginal and Torres Strait Islander Commission (ATSIC).